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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,780	10/14/2003	Steven M. Thomas	P06377US00	4224
22885	7590	07/27/2004		
MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309-2721				
			EXAMINER D ADAMO, STEPHEN D	
			ART UNIT 3636	PAPER NUMBER

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/684,780

Applicant(s)

THOMAS ET AL.

Examiner

Stephen D'Adamo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/14/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites a leg support having a ground engaging portion generally transverse to the table top and a ground engaging portion generally parallel to the table top. The ground engaging portion is confusing and unclear. Since the two ground engaging portions are distinct features of the invention, it is suggested to include a distinct reference to each portion. For example, it is suggested to include "first" and "second" in front of the "ground engaging portion" for clarity.

Claim 10 recites the limitation "the metal" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

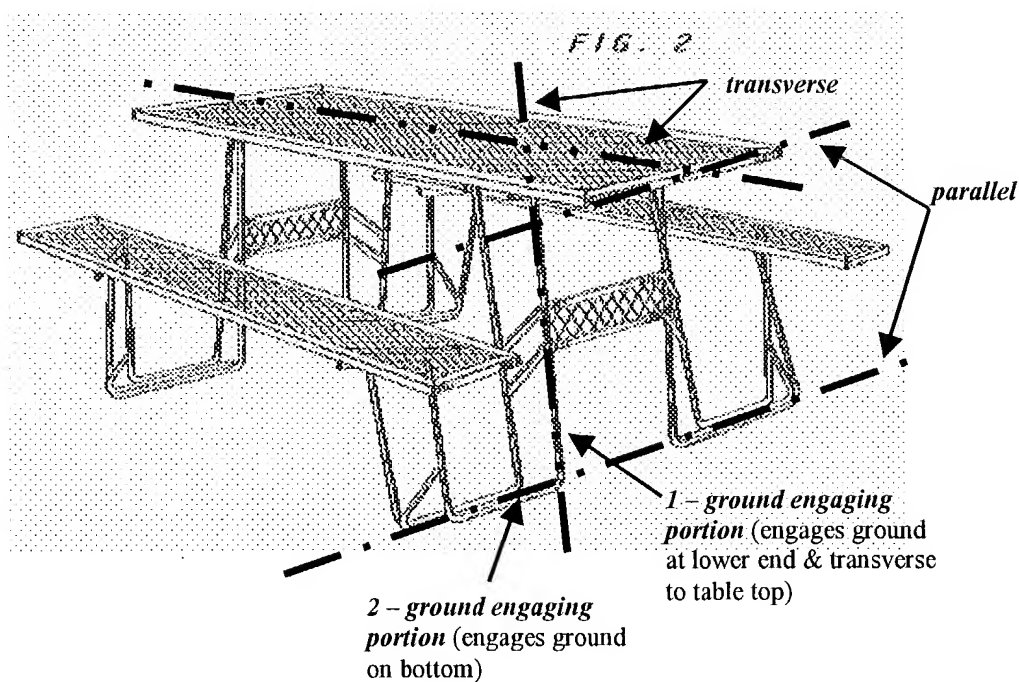
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Guice (Des. 190,744).

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Guice discloses a combined picnic table and seat unit comprising a generally flat horizontal table top having a longitudinal axis, an upper surface, a lower surface, first and second sides and first and second ends. Furthermore, the picnic table includes bent first and second leg supports wherein each leg support has a ground engaging portion "1" generally transverse to the longitudinal axis of the table and a ground engaging portion "2" generally parallel to the table (references shown below). Note, the first ground engaging portion 1 engages the ground at the lower end and is also transverse to a longitudinal axis on the table top. The leg supports also terminate in an upright seat supporting surface. The first and second table top ends are open under its lower surface and the ends of the seat structure dwell in the same vertical plane as the table top.



*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4 and 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guice (Des. 190,744).

Guice discloses a combined picnic table and seat unit comprising a generally flat horizontal table top having a longitudinal axis, an upper surface, a lower surface, first and second sides and first and second ends. Furthermore, the picnic table includes bent first and second leg supports wherein each leg support has a ground engaging portion "1" generally transverse to the longitudinal axis of the table and a ground engaging portion "2" generally parallel to the table (references shown below). The leg supports also terminate in an upright seat supporting surface. The first and second table top ends are open under its lower surface and the ends of the seat structure dwell in the same vertical plane as the table top. Moreover, Guice discloses that the leg supports are made of a tubing or pip. However, Guice fails to expressly disclose the material of each component in the picnic table. Yet, since the applicant's specification does not state that the steel leg supports, wood planks, plastic planks, aluminum stadium planks or vinyl coated fabricated expended metal as claimed, solves any particular problem or produces any

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unexpected result, whether the picnic table is steel, plastic, wood, aluminum or any other metal is merely a matter of engineering design choice, and thus does not serve to patentably distinguish the claimed invention over the prior art. Also, the materials of wood, plastic and suitable metals are all old and well known in manufacturing picnic tables.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borglum (6,116,681).

Borglum discloses a picnic table 10 accommodating wheelchairs comprising a generally flat horizontal table top 10 having a longitudinal axis. The table top 12 includes a top surface having an upper surface 14, a lower surface 16, first and second ends 18 and 20 and first and second sides 22 and 24. Borglum also includes bent first and second leg supports 38 and 40 wherein each leg support has a ground engaging portion 48 generally transverse to the longitudinal axis of the table top and a ground engaging portion 160 generally parallel to the table top. The leg supports also terminate in an upright seat support 108 and 178. The seat support 178 is of about the same length as the table top. Furthermore, the second end 20 of the table top is open under its lower surface.

However, Borglum fails to expressly disclose the picnic table having bench seats on both sides of the table top or an opening under its lower surface of the first end 18 of the table top. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the picnic table to have a bench seat on both sides and to also have an opening under the first end 18 of the table top, since it has been held

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that mere duplication of the essential working parts of an invention involves only routine skill in the art.

In regards to claims 3, 4 and 10, Borglum discloses metal tubular leg supports, which includes steel.

Regarding claim 5, as noted above, it would have been obvious to modify the claimed invention of Borglum, specifically to make the leg supports similar on both ends of the picnic table, since it has been held that mere duplication of the essential working parts of an invention involves only routine skill in the art.

Moreover, regarding claims 6-9, since the applicant's specification does not state that the wood planks, plastic planks, aluminum stadium planks or vinyl coated fabricated expended metal as claimed, solves any particular problem or produces any unexpected result, whether the planks are plastic, wood, aluminum or any other metal is merely a matter of engineering design choice, and thus does not serve to patentably distinguish the claimed invention over the prior art. Also, the materials of wood, plastic and suitable metals are all old and well known in manufacturing picnic tables.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borglum (6,116,681) in view of Kovalchek (Des. 416,693).

Borglum discloses a picnic table 10 accommodating wheelchairs comprising a generally flat horizontal table top 10 having a longitudinal axis. The table top 12 includes a top surface having an upper surface 14, a lower surface 16, first and second ends 18 and 20 and first and second sides 22 and 24. Borglum also includes bent first and second leg supports 38 and 40 wherein each leg support has a ground engaging portion 48 generally

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transverse to the longitudinal axis of the table top and a ground engaging portion 160 generally parallel to the table top. The leg supports also terminate in an upright seat support 108 and 178. The seat support 178 is of about the same length as the table top. Furthermore, the second end 20 of the table top is open under its lower surface. However, Borglum fails to expressly disclose the ends of the table top and the seat structure dwell in the same vertical plane. Yet, Kovalchek teaches of a table for handicapped access wherein the ends of both the seat structure and the table top dwell in the same vertical plane. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seat structure of Borglum by extending the ends to the same vertical plane as the table top, as taught by Kovalchek to provide more seating area for users.

### *Conclusion*

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Trubee (6,629,723), Hostetler (5,720,512), Van Blankenburg (4,522,443), Wright (4,415,199) and Bohn (2,805,708) all show various features of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen D'Adamo whose telephone number is 703-305-8173. The examiner can normally be reached on Monday-Thursday 6:00-3:30, 2nd Friday 6:00-2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pete Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.




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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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July 23, 2004

  
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